

Senate Bill 104

By: Senators Wiles of the 37th, Thomas of the 54th and Unterman of the 45th

AS PASSED

AN ACT

To amend Article 9 of Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to cosmetic laser services, so as to change certain provisions relating to the licensing of cosmetic laser practitioners; to amend certain definitions; to change certain provisions relating to the two levels of cosmetic laser services licenses; to change the requirements relating to consulting physicians; to require certain information be provided as part of informed consent; to provide the Composite State Board of Medical Examiners with the authority to waive certain requirements as to certain facilities; to provide for the license and expertise requirements of at least one member of the advisory committee; to provide for related matters; to provide for a contingent effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 9 of Chapter 34 of Title 43 of the Official Code of Georgia Annotated, relating to cosmetic laser services, is amended by revising Code Section 43-34-242, relating to definitions relative to cosmetic laser services, as follows:

"43-34-242.

As used in this article, the term:

- (1) 'Board' means the Composite State Board of Medical Examiners created by Code Section 43-34-21.
- (2) 'Consulting physician' means a person licensed to practice medicine under Article 2 of this chapter and:
 - (A) Whose principal place of practice is within this state; or
 - (B) Whose principal place of practice is outside this state but is within 50 miles from the facility with whom he or she has an agreement to provide services in accordance with Code Section 43-34-248.

- (3) 'Consumer' means a person on whom cosmetic laser services are or are to be performed.
- (4) 'Cosmetic laser practitioner' means a person licensed under this article to provide cosmetic laser services as defined in this article and whose license is in good standing.
- (5) 'Cosmetic laser services' means nonablative elective cosmetic light based skin care, photo rejuvenation, or hair removal using lasers or pulsed light devices approved by the United States Food and Drug Administration for noninvasive procedures. Such services and the provision thereof shall not be considered to be the practice of medicine.
- (6) 'Facility' means any location, place, area, structure, office, institution, or business or a part thereof in which is performed or provided cosmetic laser services regardless of whether a fee is charged for such services.
- (7) 'License' means a valid and current certificate of registration issued by the board which shall give the person to whom it is issued authority to engage in the practice prescribed thereon.
- (8) 'Licensee' means any person holding a license under this article.
- (9) 'Medical practitioner' means a registered professional nurse, nurse practitioner, physician's assistant, or physician.
- (10) 'Nurse' means a registered professional nurse or nurse practitioner.
- (11) 'Person' means a natural person."

SECTION 2.

Said article is further amended by revising Code Section 43-34-244, relating to two levels of licenses and applications, as follows:

"43-34-244.

- (a) There shall be two levels of a license for a cosmetic laser practitioner: assistant laser practitioner and senior laser practitioner.
- (b) Any person desiring to obtain a license as a cosmetic laser practitioner under the terms of this article shall make application to the board as follows:
 - (1) An applicant for an 'assistant laser practitioner' license shall present proof that he or she:
 - (A) Holds a current valid license or certificate of registration as a physician's assistant, licensed practical nurse, nurse, esthetician, or master cosmetologist, or has previously held a license or certificate of registration as a medical practitioner; and

(B) Has received at least three laser certificates from attending laser/intense pulsed light (IPL) courses as approved by the board, directly taught by a licensed physician or certified continuing medical education or continuing education educator.

If, after review of the application, it is determined that the applicant is at least 21 years of age; has met the minimum educational requirements; is of good moral character; and is possessed of the requisite skill to perform properly cosmetic laser services, a license shall be issued to the applicant entitling the applicant to practice the occupation of cosmetic laser practitioner at the assistant laser practitioner level under the on-site supervision of a senior laser practitioner.

(2) An applicant for a 'senior laser practitioner' license shall present proof that he or she:

(A) Holds a current valid license or certificate of registration as a physician's assistant or nurse or has previously held a license or certificate of registration as a medical practitioner;

(B) Has at least three years of clinical or technological medical experience, or both;

(C) Has been or was licensed or nationally board certified as a medical practitioner for at least three years; and

(D) Has received at least two laser certificates from attending laser/intense pulsed light (IPL) continuing medical education courses as approved by the board, directly taught by a licensed physician or certified continuing medical education or continuing education educator.

If, after review of the application, it is determined that the applicant is at least 21 years of age; has met the minimum educational and clinical training requirements to perform cosmetic laser services with indirect supervision; is of good moral character; and is possessed of the requisite skill to perform properly these services, a license shall be issued to the applicant entitling the applicant to practice the occupation of cosmetic laser practitioner at the senior laser practitioner level pursuant to the protocols of a consulting physician.

(c) Any person desiring to obtain a license as an 'assistant laser practitioner' who does not meet the requirements of paragraph (1) of subsection (b) of this Code section shall also be eligible for a license as an 'assistant laser practitioner' if he or she makes application to the board within nine months of the effective date of this article and presents proof that he or she:

(1) Prior to the effective date of this article, obtained a minimum of at least 2,000 hours of experience in administering cosmetic laser service; and

- (2) Has received at least two laser certificates from attending laser/intense pulsed light (IPL) courses, directly taught by a licensed physician or certified continuing medical education or continuing education educator.
- (d) Should an applicant have a current cosmetic laser practitioner license or certificate of registration in force from another state, country, territory of the United States, or the District of Columbia, where similar reciprocity is extended to this state and licensure requirements are substantially equal to those in this state, and have paid a fee and have submitted an application, the applicant may be issued a license at the appropriate level entitling him or her to practice the occupation of a cosmetic laser practitioner at that level, unless the board, in its discretion, sees fit to require a written or a practical examination subject to the terms and provisions of this article. "

SECTION 3.

Said article is further amended by revising Code Section 43-34-248, relating to agreement with consulting physician, as follows:

"43-34-248.

- (a) Any facility providing cosmetic laser services other than hair removal using lasers or pulsed light devices shall have an agreement with a consulting physician who shall:
- (1) Be trained in laser modalities;
 - (2) Establish proper protocols for the cosmetic laser services provided at the facility and file such protocols with the board;
 - (3) Examine each patient prior to any cosmetic laser service other than hair removal using lasers or pulsed light devices being performed; provided, however, that a consulting physician may delegate the authority to perform such examination to a physician's assistant who is a licensed cosmetic laser practitioner, in accordance with a job description approved by the board, or to a registered professional nurse who is also an advanced practice registered nurse as defined in paragraph (1.1) of Code Section 43-26-3 and who is a licensed cosmetic laser practitioner, pursuant to a protocol approved by the board; and provided, further, that in facilities subject to the provisions of Code Section 43-34-249.1 such delegation may be to: (A) a physician's assistant who is not required to be a licensed cosmetic laser practitioner, in accordance with a job description approved by the board; or (B) a registered professional nurse who is also an advanced practice registered nurse who is not required to be a licensed cosmetic laser practitioner, in accordance with a protocol approved by the board; and

- (4) Be available for emergency consultation with the cosmetic laser practitioner or anyone employed by the facility.
- (b) Any facility providing cosmetic laser services other than hair removal using lasers or pulsed light devices shall have a supervisor present at the facility or immediately available for consultation and supervision either personally or via telecommunications. The supervisor shall supervise the performance of all cosmetic laser services performed by a person other than the consulting physician. The supervisor shall be a physician licensed under this chapter who is trained in laser modalities or a senior laser practitioner.
- (c)(1) Any facility providing cosmetic laser services other than hair removal using lasers or pulsed light devices shall post a sign listing the consulting physician's name, emergency contact number, his or her board certification and specialty, and the address of his or her principal place of practice, and indicating whether he or she is presently on site at the facility.
- (2) If the consulting physician is not on site for any period of time during which the facility is open, the facility shall post a sign indicating who is presently acting as the supervisor for the facility and that person's name, emergency contact number, his or her degrees and qualifications, and the type of cosmetic laser practitioner license held."

SECTION 4.

Said article is further amended by revising Code Section 43-34-249, relating to informed consent, as follows:

"43-34-249.

- (a) Prior to receiving cosmetic laser services from a cosmetic laser practitioner, a person must consent in writing to such services and shall be informed in writing of the general terms of the following:
- (1) The nature and purpose of such proposed procedure;
 - (2) Any material risks generally recognized and associated with the cosmetic laser service to be performed which, if disclosed to a reasonably prudent person in the customer's position, could reasonably be expected to cause such prudent person to decline such proposed cosmetic laser services on the basis of the material risk of injury that could result from such proposed services;
 - (3) The name of, degrees and qualifications held by, and type of licenses obtained by the individual who will be performing the cosmetic laser service, and with respect to cosmetic laser services other than hair removal, the supervisor and the consulting physician;

- (4) The steps to be followed after the cosmetic laser service is performed in the event of any complications; and
- (5) With respect to cosmetic laser services other than hair removal, the emergency contact information for the consulting physician and the address of his or her principal place of practice.
- (a.1) After receiving each cosmetic laser service other than hair removal, a person shall be informed in writing of the information required by paragraphs (4) and (5) of subsection (a) of this Code section.
- (b) It shall be the responsibility of the cosmetic laser practitioner to ensure that the information required by subsections (a) and (a.1) of this Code section is disclosed and that the consent provided for in this Code section is obtained.
- (c) Where the consumer is under 18 years of age, the consent of the consumer's parent or legal guardian shall be required.
- (d) The board shall be required to adopt and have the authority to promulgate rules and regulations governing and establishing the standards necessary to implement this Code section specifically including but not limited to the disciplining of a cosmetic laser practitioner who fails to comply with this Code section.
- (e) Nothing in this Code section shall prohibit the information provided for in this Code section from being disclosed through the use of video tapes, audio tapes, pamphlets, booklets, or other means of communication or through conversations with the cosmetic laser practitioner; provided, however, that such information is also provided in writing and attached to the consent form which the consumer signs."

SECTION 5.

Said article is further amended by adding a new Code section to read as follows:

"43-34-249.1.

The board shall have the authority to waive the requirements of subsection (c) of Code Section 43-34-248 and paragraph (5) of subsection (a) of Code Section 43-34-249 for facilities offering cosmetic laser services which serve as a principal place of practice at which a physician regularly sees patients if medical services are regularly performed at such facilities. For purposes of this Code section, 'medical services' shall mean the general and usual services and care rendered and administered by a physician."

SECTION 6.

Said article is further amended by revising Code Section 43-34-250, relating to the advisory committee, as follows:

"43-34-250.

The board shall appoint an advisory committee. The advisory committee shall be representative of a cross section of the cultural backgrounds, to the extent practical, of the licensed cosmetic laser practitioners licensed under this article and such members as the board in its discretion may determine. The advisory committee shall include at least one person licensed to practice medicine under this chapter and specialized in a field with expertise in the biologic behavior of the skin. Members shall receive no compensation for service on the committee. The committee shall have such advisory duties and responsibilities as the board may determine, including but not limited to consulting with the board on the issuance, denial, suspension, and revocation of licenses and the promulgation of rules and regulations under this article. The initial members of the advisory committee may include persons eligible for licensing under this article. Subsequent advisory committee members must be licensed pursuant to this article."

SECTION 7.

This Act shall become effective only if and when the "Georgia Cosmetic Laser Services Act," approved May 29, 2007 (Ga. L. 2007, p. 626), becomes effective as provided in Section 2 therein.

SECTION 8.

All laws and parts of laws in conflict with this Act are repealed.